

## **Desk Statement and Q&A on RMP-CFATS Letters (January 28, 2013)**

**Desk Statement** for Congressional & Press Inquiries Requesting Background on EPA's Effort to Contact Facilities Regarding Their RMP Status

In an effort to improve compliance with certain federal regulations (following several chemical facility explosions in 2013) EPA has been working with the Department of Homeland Security (DHS) to analyze EPA's Risk Management Plan (RMP) database by comparing it to the DHS Chemical Facility Anti-Terrorism Standard (CFATS) "Top Screen" database. This analysis is designed to determine if the CFATS database includes facilities that should have also reported under EPA's RMP chemical accident prevention program. A list of potential "outlier" or "non-filer" facilities has been developed. EPA is now in the process of sending letters to these facilities, in an effort to determine if they are facilities which should be included in the RMP program (or not) and if so, to help them successfully comply and report as required.

### **Questions and Answers**

Q: Why is EPA sending letters to facilities?

A: See Desk Statement.

Q: Why did EPA not previously identify these potential RMP non-filers?

A: There are a variety of reasons that a facility covered under RMP could fail to file a Risk Management Plan as required. For example, a facility may have been recently constructed, may have recently changed its operations to exceed an RMP threshold quantity, or may simply be unaware of the requirement to file an RMP. EPA conducts frequent industry outreach to inform facilities about RMP requirements, and periodically analyzes other available databases in order to identify potential RMP non-filers. For example, EPA evaluates the RMP database with the Toxic Release Inventory (TRI) database and in light of certain state databases that may be generated based on licensing or permitting, and on Tier II filings to the states under EPCRA. The DHS CFATS data recently made available to EPA provided the Agency with a unique source of chemical facility information that was used for this purpose.

Q: Is this a new program?

A: No; the RMP program has been in place since 1996; eligible facilities have been required to comply since 1999. When EPA finds a facility that might be subject to the RMP requirements but EPA cannot find it in its database, EPA will send that facility a letter to request information.

Q: How will EPA determine whether these facilities are actual RMP non-filers (i.e., facilities that are in fact subject to the RMP requirements but failed to comply)?

A: EPA will send notification letters to each facility identified through the Agency's analysis to inform the facility that it may be subject to the Risk Management Program. The letter directs facilities that are subject to the RMP regulations to comply with those regulations, including the requirement to submit an RMP to EPA, within 30 days of receipt of the notification letter. If a facility in receipt of a notification letter concludes it is not subject to the requirements, the letter requests the facility advise the Agency as to why it is not subject. This will allow the Agency to further evaluate the circumstances in light of new information, and determine if the facility should be removed from the list of potential RMP non-filers.

Q: What if a facility is supposed to be covered by the RMP and it didn't comply? Conversely, what if a

facility isn't covered by the RMP? What do they do?

A: If the facility is supposed to be in compliance with RMP, EPA will request that it comply as soon as possible and to submit an RMP to EPA. If a facility isn't covered by the RMP, a reply to the letter from the facility stating why it isn't covered is sufficient.

Q: Will EPA also consider enforcement action?

A: EPA reserves the right to pursue enforcement action should the facts in a specific case warrant.

Q: IS DHS also looking for CFATS "outliers"?

A: Yes. The analysis of the RMP database in comparison to the CFATS Top Screen" database was bi-directional, and DHS has also generated a list of potential non-filers. Further information can be obtained from DHS on their efforts to bring facilities into compliance with CFATS.

Q: May the public have a list of facilities receiving these letters?

A: At this time, the recipients are only being asked if they should be complying with RMP. EPA believes it is appropriate to first allow those facilities that are not required to comply with the RMP regulation to so state, and to drop them from further public discussions on this topic. Facilities that are required to comply will appear on the RMP database as soon as those facilities come into compliance.

Q: Was Freedom Industries in West Virginia covered under RMP?

A: EPA currently has regulations for oil storage facilities under the Clean Water Act (Spill Prevention, Control, and Countermeasure Program – SPCC), and for chemicals listed under the Clean Air Act's Risk Management Program – RMP – to prevent, minimize and respond to releases.

Based on our current information, the Freedom Industries facility in West Virginia is not regulated under the EPA's RMP since neither MCHM nor PPH are on the list of RMP-regulated substances; and the SPCC Program does not apply to the tanks, as we are not aware that they contained any oil.

Answers when Qs come from Congress:

All the same except last one – EPA expects to share information with Congress upon request.